76-1039

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75—754

WARREN B. WILSON,

Appellant,

v.

O. MEREDITH WILSON, JR., FRANK H. HILTON, JR., HUGH SMITH, GREGORY T. HORNECKER, RONALD L. MARCEAU, EDWARD H. WARREN, THOMAS B. BRAND, JAMES W. KORTH and JON B. LUND, constituting the Board of Examiners of the Oregon State Bar, individually and in their official capacities; HOWARD A. RANKIN, DOUGLAS E. KAUFMAN, JOHN H. HOLLOWAY, WILLARD K. CAREY, DAVID S. PATTULLO, RAYMOND J. SALISBURY, ORLANDO J. HOLLIS, EDWIN J. PETERSON, DONALD R. WILSON, MERLE A. LONG, JAMES O. GARRETT, CARL R. NEIL, KENNETH E. ROBERTS, SR. and PETER L. BARNHISEL, constituting the Board of Governors of the Oregon State Bar, individually and in their official capacities; and KENNETH J. O'CONNELL, WILLIAM M. McALLISTER, ARNO H. DENECKE, RALPH M. HOLMAN, THOMAS H. TONGUE, E. H. HOWELL and DEAN BRYSON, the Honorable Justices of the Supreme Court of the State of Oregon, individually and in their official capacities,

Appellees.

On Appeal from the United States District Court
For the District of Oregon

JURISDICTIONAL STATEMENT

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No. 75–754

WARREN B. WILSON,

Appellant,

v.

O. MEREDITH WILSON, JR., FRANK H. HILTON, JR., HUGH SMITH, GREGORY T. HORNECKER, RONALD L. MARCEAU, EDWARD H. WARREN, THOMAS B. BRAND, JAMES W. KORTH and JON B. LUND, constituting the Board of Examiners of the Oregon State Bar, individually and in their official capacities; HOWARD A. RANKIN, DOUGLAS E. KAUFMAN, JOHN H. HOLLOWAY, WILLARD K. CAREY, DAVID S. PATTULLO, RAYMOND J. SALISBURY, ORLANDO J. HOLLIS, EDWIN J. PETERSON, DONALD R. WILSON, MERLE A. LONG, JAMES O. GARRETT, CARL R. NEIL, KENNETH E. ROBERTS, SR. and PETER L. BARNHISEL, constituting the Board of Governors of the Oregon State Bar, individually and in their official capacities; and KENNETH J. O'CONNELL, WILLIAM M. McALLISTER, ARNO H. DENECKE, RALPH M. HOLMAN, THOMAS H. TONGUE, E. H. HOWELL and DEAN BRYSON, the Honorable Justices of the Supreme Court of the State of Oregon, individually and in their official capacities,

Appellees.

On Appeal from the United States District Court For the District of Oregon

JURISDICTIONAL STATEMENT

Appellant appeals from the final consolidated judgment entered November 11, 1976, by a statutory three-judge United States District Court for the District of Oregon, dismissing all counts in appellant's complaint, and submits this

Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINION BELOW

The opinion of the United States District for the District of Oregon is reported in 416 F. Supp. 984 (1976). The text of the opinion is included here as Appendix A, *infra*, pp. 1a-9a.

JURISDICTION

This appeal derives from claims brought under 42 U.S.C., § 1983, and 28 U.S.C., §§ 1343(3), 2201, 2202 and 2281,[1] to declare the appellant's constitutional rights and to enjoin enforcement of statutes and rules of the State of Oregon as unconstitutional. The final consolidated judgment of the United States District Court for the District of Oregon was entered on November 11, 1976, and notice of appeal was filed in that court on December 8, 1976.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C., §§ 1253 and 2101(b). The text of the notice of appeal is included here as Appendix B, *infra*, p. 10a.

CONSTITUTIONAL PROVISIONS INVOLVED

"The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes . . . ."

Article I, Section 8, Clause 3.

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Article IV, Section 2, Clause 1.

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ."

Section 1, Amendmant XIV.

[1] Although 28 U.S.C., § 2281 has been repealed by Act of August 12, 1976, Pub. L. No. 94-381, § 1, 45 U.S.L.W. 1, § 7 of the Act provides that the Act shall not apply to any action commenced on or before the date of enactment.

"[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws."

Section 1, Amendment XIV.

STATUTES AND RULES INVOLVED

"An applicant for admission as attorney must apply to the Supreme Court and show that he or she:

(1) Is a citizen of the United States, except as provided in ORS 9.230, and of this state, and at least 18 years old, which proof may be made by the applicant's affidavit."

Section 9.2201(1), Oregon Revised Statutes (1975)

"No person may be admitted to practice law in Oregon unless he is, at the time of his admission, (a) a resident of Oregon and (b) a citizen of the United States or has declared his intention to become a citizen of the United States."

Rules for Admission of Attorneys 1.10, Oregon Supreme Court.

"An active member of the Oregon State Bar who ceases to be a resident of Oregon and engages in the practice of law in another state may not practice law or maintain an office for the practice of law in Oregon while engaged in the practice of law in the other state. Such a nonresident active member may appear, however, if associated with a resident active member of the Oregon State Bar, as counsel for a party in a particular action, suit or proceeding then pending in a court or before a judicial officer of Oregon."

Rules for Admission of Attorneys 7.05, Oregon Supreme Court.

QUESTIONS PRESENTED

1. Whether Section 9.220(1) of the Oregon Revised Statutes and rule 1.10 of the Oregon Supreme Court Rules for Admission of Attorneys which require as interpreted by the appellees that an applicant to the Oregon bar be a resident by the time of admission:

A. deprive appellant of privileges and immunities protected under Article IV, Section 2, Clause 1 of the United States Constitution;

B. cast an impermissible burden upon interstate commerce in derogation of Article I, Section 8, Clause 3 of the United States Constitution; or

C. deprive appellant of rights secured by the due process or equal protection clauses of the XIVth Amendment to the United States Constitution.

2. Whether rule 7.05 of the Oregon Supreme Court Rules for Admission of Attorneys which precludes a member of the Oregon bar from actively practicing law in Oregon if the member ceases to be a resident of Oregon and engages in the practice of law in another state:

A. casts an impermissible burden upon interstate commerce in derogation of Article I, Section 8, Clause 3 of the United States Constitution; or

B. deprives appellant of rights secured by the due process or equal protection clauses of the XIVth Amendment to the United States Constitution.

STATEMENT OF THE CASE

Appellant seeks admission to practice law in Oregon. Appellees are the members of the Board of Governors and Board of Bar Examiners of the Oregon State Bar and the Justices of the Oregon Supreme Court. Appellees refuse to file appellant's application for admission to the Oregon bar, one reason being that appellant does not intend to become a full-time resident of Oregon. Appellees are enforcing Section 9.220(1) of the Oregon Revised Statutes and rule 1.10 of the Oregon Supreme Court Rules for Admission of Attorneys.

Appellant lives part-time in Gold Hill, Oregon and part-time in Oakland, California. California is the appellant's domicile. Appellant is an active member of the California bar and has been for 25 years. Appellant intends to continue his California practice and to engage in the practice of law in Oregon.

Appellant initiated this suit in the United States District Court for the District of Oregon. The first three counts of appellant's complaint, as modified by the pre-trial order, were brought under 42 U.S.C., § 1983 and under 28 U.S.C., §§ 1343(3), 2201, 2202 and 2281. Appellant sought thereby a declaration of his constitutional rights, injunctive and any other appropriate relief in relation to Section 9.220(1) of the Oregon Revised Statutes and rules 1.10 and 7.05 of the Oregon Supreme Court Rules for Admission of Attorneys.

A three-judge federal district court was convened and heard argument on the same constitutional questions presented in this appeal. The district court's opinion was received by the clerk on June 28, 1976.

The court ruled that appellant could not challenge the requirement of Section 9.220(1) of Oregon Revised Statutes that:

> "he be a citizen of Oregon at the time of admission to practice. Rather, he challenges the Board's interpretation of that statute to require on his application a statement of intention to be an Oregon resident at the time of admission."
> 416 F. Supp. at 987.[2]

The court did not deal with appellant's challenges to rule 7.05.

The district court concluded appellant had not demonstrated any constitutional deprivation, specifically holding that Oregon Revised Statutes, Section 9.220(1) as interpreted and applied by appellees does not violate the appellant's rights of equal protection and due process. The court, however, did not

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2 Question 7(b), included here as Appendix C, p. 11a, queries: "If not a resident of the State of Oregon, is it your intention to become a resident prior to the time of your admission to practice law in Oregon?" The function of this question is to screen out those applicants who will not meet the residency requirement imposed by Section 9.220(1) of the Oregon Revised Statutes and rule 1.10 of the Oregon Supreme Court Rules for Admission of Attorneys. The use of question 7(b) as a screening tool is obviously dependent upon the constitutional validity of the underlying residency requirement. Therefore, appellant has directed his challenge to rule 1.10 and Section 9.220(1) rather than question 7(b).

discuss appellant's constitutional claims under the commerce clause and under the interstate privileges and immunities clause. Nor did the court discuss appellant's specific due process claims which apply the irrebuttable presumption doctrine.

Judge Thompson concurred in the court's residency holdings on the ground of controlling precedent. Nonetheless, he said he was thoroughly in agreement with Justice Douglas' dissenting opinion in *Martin v. Walton,* 368 U.S. 25 (1961).

The United States District Court for the District of Oregon entered an order of November 11, 1976, setting aside three previous judgments of the court which, in combination, dismissed all seven counts of the complaint. The judgments of the court, the court's order of November 11, 1976 and appellant's motion to consolidate judgments are included here in Appendix D, *infra,* pp. 12a-17a.

Appellant filed a notice of appeal on December 8, 1976, as to the court's final judgment on counts 1, 2 and 3 of the complaint.

THE QUESTIONS ARE SUBSTANTIAL

This appeal is of substantial importance to all attorneys considering dual state practice, such as the appellant.

It is also important to all persons desiring to reside in one state and practice law in a neighboring state.

The questions raised are ethically important to law students searching for employment in several states.[3] When

3 Chapin D. Clark, Dean of the University of Oregon School of Law, has stated in an affidavit which is part of the record, and is included here as Appendix E, *infra,* pp. 18a-20a:

> "In this period of a tight job market for recent law graduates in traditional private practice situations, it is my clear impression that an increasing proportion of senior law students and recent graduates are seeking, and of necessity must seek employment opportunities as lawyers on an increasingly wider scale, both in terms of the nature of the positions sought in government, business and private practice but also in terms of the geographical locations of such employment opportunities."

such third-year students file application forms with more than one state bar, they cannot honestly declare an intention to become a citizen of a particular state in response to a residency screening question like 7(b) on the Oregon application form.

Bar residency requirements also pose an ethical dilemma to law school graduates who have accepted positions in federal agencies requiring state bar admission as a qualification. Such graduates may have ethical problems in claiming themselves resident bar admittees when they know they will be residing outside the state to practice law.

Appellant's appeal is apparently the first to ask the court to rule upon the constitutionality of a bar residency requirement under the commerce clause, interstate privileges and immunities clause, and under the due process irrebuttable presumption doctrine.

The remainder of this section of the Jurisdictional Statement is devoted to the merits of appellant's constitutional claims and to a criticism of the holdings and reasonings of the district court which appellant assigns as being in error.

1. CONSTITUTIONALITY OF OREGON'S ADMISSION RESIDENCY REQUIREMENT.

A. *Privileges and Immunities Clause.*

One reason for the adoption of Article IV, Section 2, Clause 1, of the United States Constitution was to insure that persons could engage in trade or commerce in a state not their own and enjoy the privileges of trading and commerce afforded the citizens therein. *Slaughter-House Cases,* 83 U.S. 36 (1873). In *Toomer v. Witsell,* 334 U.S. 385, 396 (1948), the Court said:

> "[I]t was long ago decided that one of the privileges which the clause guarantees to citizens of State A is that of doing business in State B on terms of substantial equality with the citizens of that state."

In *Goldfarb v. Virginia State Bar,* 421 U.S. 773, 787 (1975), the Supreme Court acknowledged that the exchange

of a legal service, an examination of a land title, for money is commerce in the most common usage of that term.

The appellant contends that Oregon's exclusion of nonresidents from the bar denies him the privilege of plying his trade "where there is no substantial reason" for the disparity in treatment between nonresidents and citizens. *See generally, Toomer v. Witsell, supra.*

It is conceded that when Oregon first adopted its bar residency requirement in 1862,[4] it served the legitimate state interest of promoting the speedy and efficient administration of justice in an age of difficult travel and poor communications. Today, however, our communication and transportation systems allow a responsible attorney to be present at hearings called on short notice, and to respond promptly and be reached by courts, other attorneys, and his clients.

Oregon's admission residency requirement does not further the legitimate state interests of securing to its citizens an informed, responsible and stable bar. An applicant's proficiency in Oregon jurisprudence and procedure is dependent upon his or her ability and industry. It is not dependent upon choice of domicile at the time of bar admission. Likewise, an applicant's choice of domicile bears no relation to his or her willingness to serve respectfully and efficiently the citizens and courts of Oregon. Nor does an admission residency requirement assure a stable bar. Such a requirement does not constrain the practitioner from changing his or her place of abode or domicile after admission.

No facts have been submitted into the record from which to conclude that the appellant, or in general any nonresident, would pose a disciplinary problem if admitted to the Oregon judicial system. Appellant's professional and ethical conduct would then be subject to the scrutiny of two jurisdictions, i.e.

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4 "An applicant for admission as an attorney must apply to the supreme court, and must show: That he is a citizen of the United States and of this state, and of the age of twenty-one years, which proof may be made by his own affidavit . . . ." Act of October 11, 1862, Section 1003, 1862 Or. Laws 246.

California and Oregon. In Florida, the "Bar has numerous nonresident members and it has not suffered disciplinary hardships." *Hall v. King,* 266 So. 2d 33, 34 (Fla. 1972).

Should a disciplinary problem arise while a nonresident attorney is absent from Oregon, service of process can be obtained under Oregon's long arm statute which permits service on nonresidents doing business in the state. Oregon Revised Statutes, § 14.035.

B. *Interstate Commerce Clause.*

The appellant contends that section 9.220(1) of the Oregon Revised Statutes, rule 1.10 of Oregon Supreme Court Rules for Admission of Attorneys, and appellee's application requirement of a statement of intent to reside in Oregon, cast an impermissible burden on interstate commerce. *Goldfarb, supra,* implicitly holds that the practice of law can constitute "commerce." Oregon's residency requirement burdens interstate commerce by: 1) precluding nonresident attorneys from regularly and fully representing clients whose multi-state economic activities extend into Oregon; and 2) by preventing Oregon citizens from contacting, and engaging, out-of-state *attorneys* to handle their legal affairs in Oregon.[5]

Oregon has in effect created a barrier against nonresident competition. The late Dean Horack of Duke University Law School wrote that residency admission requirements serve mainly to protect resident lawyers and law students from outside competition. Horack, *"Trade Barriers" to Bar Admissions,* 28 J. Am. Jud. Soc'y, 102 (1944).

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5. "In recent years the frequency with which an attorney's business requires him to cross state lines has increased greatly. The specific reasons for this expansion are several: . . . as economic activity becomes increasingly national in scale, more cases have interstate and multi state aspects; and the increased mobility of the populace has made more frequent the local practitioner's encounter with a client who has interests in different jurisdictions." *Attorneys: Interstate and Federal Practice,* 80 Harv. L. Rev. 1711 (1967).

Appellant has contended in his privileges and immunities claim, *supra*, that Oregon's admission residency requirement does not promote a legitimate state interest. Assuming *arguendo* that Oregon is somehow promoting legitimate state interests (such as the speedy and efficient administration of justice or an informed and responsible bar) the burden cast upon interstate commerce is unconstitutional because reasonable and nondiscriminating alternatives are available. *See generally, Dean Milk Co. v. City of Madison,* 340 U.S. 349, 354 (1951); *Pike v. Bruce Church, Inc.,* 397 U.S. 137, 142 (1970), (the extent of the burden that will be tolerated depends upon the nature of the state's interest and whether it can be promoted as well with a lesser impact on interstate activities).

Oregon can assure the responsibility of nonresident practitioners by: 1) requiring designation of an agent for service of process; 2) requiring maintenance of a staffed Oregon law office; and/or 3) by the reprimand, suspension or disbarment of attorneys not meeting court calendars or unavailable to clients.

Oregon can assess the competency of all applicants by utilization of bar examinations specifically testing preparation for Oregon practice and procedure. The Board of Bar Examiners has chosen not to test lawyers such as the appellant, with three or more years practice experience, in regard to Oregon law. Only the multi-state bar examination is administered to such applicants.

The state can assess the character of nonresident applicants by utilization of national investigatory services. Even as to applicants who intend to become Oregon citizens at the time of admission,

> "Only careful investigation at the applicant's former place of residence is apt to disclose those habits or qualities which would make him an undesirable member of the local bar." Horack, *"Trade Barriers" to Bar Admission, supra,* cited in *Keenan v. Board of Law Examiners,* 317 F. Supp. 1350, 1359 (E.D.N.C. 1970).

The National Conference of Bar Examiners currently offers a national investigatory service.

C. *Due Process Clause.*

The district court below held that section 9.220(1) of the Oregon Revised Statutes and rule 1.10 of the Oregon Supreme Court Rules for Admission of Attorneys, as interpreted and applied by appellees, does not deny appellant due process of law. The court, however, did not discuss appellant's specific due process contention under the irrebuttable presumption doctrine, nor any of the cases cited by the appellant.

A statute or rule which creates "a presumption [and] which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment." *Heiner v. Donnan,* 285 U.S. 312, 329 (1932). *See also United States Dep't of Agriculture v. Murry,* 413 U.S. 508 (1973); *Stanley v. Illinois,* 405 U.S. 645 (1972); *Carrington v. Rach,* 380 U.S. 89 (1965). Oregon's admission residency requirement denies appellant procedural due process by irrebuttably presuming that nonresidents cannot competently serve the courts and citizens of Oregon. Oregon provides no individualized determination as to any particular nonresident's character or abilities. *See generally, Cleveland Board of Education v. Lafleur,* 414 U.S. 632 (1974).

In *Vlardis v. Kline,* 412 U.S. 441, 452 (1973), the court considered whether the state has "reasonable alternative means of making the crucial determination." Several alternative procedures can be utilized by Oregon to assess and to help assure the competency and responsibility of nonresident practitioners. These are outlined in the commerce clause analysis, *supra.*

D. *Equal Protection Clause.*

Appellant believes the appropriate equal protection standard is contained in *Schware v. Board of Bar Examiners,* 353 U.S. 232, 239 (1957):

> "A State can require high standards of qualifications... before it admits an applicant to the bar, but any qualification must have a rational connection with

the applicant's fitness or capacity to practice law."

It is argued, *supra*, that Oregon's residency qualification does in no way help assure the fitness and capability of Oregon practitioners.

The district court below said:

> "[A] state clearly has a compelling state interest in 'promoting the speedy and efficient administration of justice in its courts by assuring the competence and discipline of its bar' . . . . The requirement that new admittees be state residents at the time of admission is a permissible method by which to promote this compelling state interest." 416 F. Supp. at 987.

The district court, however, did not state, much less explain, *how* the requirement promotes the competence and discipline of its bar. The appellant asserts that it is a man's intellectual capability and training, not his choice of domicile, which will determine his competency as an Oregon practitioner. As for the State's interest in the discipline of its bar, there are simply no facts in the record which show that nonresident attorneys would pose a particular disciplinary problem in Oregon, or for that matter, in any state.

The district court rested its above holding on three cases which it did not discuss: *Aronson v. Ambrose*, 479 F.2d 75, 77–78 (3d Cir.), *Cert. denied*, 414 U.S. 854 (1973); *Brown v. Supreme Court of Virginia*, 359 F. Supp. 549, 556–59 (E.D. Va.), *aff'd memo.*, 414 U.S. 1034 (1973); *Suffling v. Bondurant*, 339 F. Supp. 257 (D.N.M.), *aff'd memo.*, 409 U.S. 1020 (1972). These cases are distinguishable on their facts or residency requirements involved.

In *Suffling v. Bondurant, supra*, the contested admission requirement was that an applicant be a resident of New Mexico for six months prior to admission. The reason given by the court in support of the requirement was that a reasonable durational residency period facilitates evaluation of the applicant's moral character and fitness. This rationale is inapplicable to Oregon's residency requirement. The Oregon bar applicant need not be a resident during the admissions process nor even be present in the state except for the bar

examination, and to take the oath of office.

In *Aronson, supra*, the court of appeals held that a rule requiring applicants to the Virgin Islands bar to allege and prove intent to reside and practice in the Virgin Islands was not violative of equal protection. The court of appeals adopted the district court's reasoning that the geographical isolation of the Virgin Islands made dual practice difficult. There is no indication in the case at bar that appellant would have such difficulties in practicing law in the neighboring states of California and Oregon.

In *Brown, supra*, the court upheld Virginia's rules requiring attorneys seeking admission by reciprocity without taking a bar examination to be residents and to intend to practice full time in Virginia. The court was concerned about persons successfully passing a bar examination in one state and then demanding the right to practice in all fifty states. It is significant that Virginia did not require bar examinees to be residents at the time of admission.

It is important to observe that these cases did not involve commerce clause, interstate privileges and immunities clause, nor irrebuttable presumption-due process clause contentions. To the extent, if any, that the above cases are inconsistent with these contentions or appellants's equal protection claim, the appellant asks the court to reconsider them.

The only other reason given by the district court for rejecting appellant's equal protection challenge is that "the requirements are reasonable means of furthering Oregon's legitimate state interest in minimizing its administrative and investigative workload." 416 F. Supp., at 988. In response, the appellant notes that Oregon does not require applicants to reside in the State during the period of investigation. Such a requirement is far more rational and just than simply not processing applications from persons not intending to become Oregon citizens. Any additional costs of an interstate investigatory search can be passed on to the applicant.

2. CONSTITUTIONALITY OF RULE 7.05 OF THE OREGON SUPREME COURT RULES FOR ADMISSION OF ATTORNEYS

Appellant contends that rule 7.05 of the Oregon Supreme Court Rules for Admission of Attorneys also imposes an unconstitutional residency requirement. Under rule 7.05, the appellant cannot actively practice law in Oregon even if admitted to the bar since he practices law in another state and does not intend to be a full-time Oregon resident. Rule 7.05, in effect, imposes the same residency requirement upon nonresident attorneys admitted to the Oregon bar as rule 1.10 and section 9.220(1) of the Oregon Revised Statutes impose upon nonresident applicants.

The due process, equal protection and commerce clause contentions already made apply equally to the residence requirement contained in rule 7.05 and are incorporated here by this reference.

While *Martin v. Walton, supra,* lends authority to rule 7.05's dual-state practice prohibition, the appellant prays that the Court not be constrained to follow the holding with respect to appellant's equal protection challenge to rule 7.05.

CONCLUSION

For the reasons set out in this Statement, the Court should note probable jurisdiction and set this appeal for plenary hearing.

Respectfully submitted,

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APPENDIX

APPENDIX A

Opinion of the United States District Court for the District of Oregon, filed June 28, 1976 and reported at 416 F. Supp. 984.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 75–754
OPINION

WARREN B. WILSON, *Plaintiff,*

v.

O. MEREDITH WILSON, JR., ET AL., *Defendants.*

PER CURIAM:

In this Section 1983 action [42 U.S.C. § 1983], plaintiff challenges the constitutionality of certain Oregon statutes, Supreme Court rules, and requirements of the state's Board of Bar Examiners, pertaining to application for admission to the Oregon State Bar.

The facts are not in dispute. Plaintiff resides part-time on his farm in Gold Hill, Oregon, and part-time in Oakland, California. He is an active member of the California bar. Defendants are members of the Board of Governors of the Oregon State Bar, members of the Board of Bar Examiners, and justices of the Oregon Supreme Court.

Plaintiff seeks to practice law both in California and Oregon. He has no intention to establish full-time residence in Oregon.

In 1974 and 1975, plaintiff applied for admission to the Oregon bar. He was allowed to take the 1974 bar examination but was denied admission because of noncompliance with examination regulations. This denial was upheld by the federal district court in its unpublished opinion of January 24, 1975. *Wilson v. Wilson*, Civ. No. 74–521 (D. Ore.).

Plaintiff's 1975 application was denied for three reasons:

(1) He failed to properly answer a question on the application form concerning the existence of any expunged offenses on his record;

(2) He refused to sign a statement prospectively exonerating from liability any person who provided the Board or Bar Examiners with information bearing on his application for admission;

(3) He failed to indicate on the application his intent to meet Oregon's residency requirements as of the time of admission.

Plaintiff asserts jurisdiction under Title 28 U.S.C. §§ 1343(3), and Title 42 U.S.C. § 1983. He alleges in the alternative: (1) defendants have exceeded the permissible scope of statutory or regulatory authority; or (2) the Oregon statutes and rules violate his rights of equal protection, procedural and substantive due process, and interstate travel. He seeks both injunctive and declaratory relief.

Defendents ask, alternatively, that we either award judgment for them and dismiss all claims or abstain from reaching them because of the possibility that state court interpretation could render unnecessary any federal constitutional adjudication.

I. *EXPUNGED OFFENSES*

In its standard application form the organized bar asks whether an applicant has

> ever been accused of, charged with, or arrested or detained for, the violation of any state, federal, municipal or other law, statute or ordinance, including juvenile or expunged offenses.

Plaintiff struck the words "or expunged," and answered "No."

Plaintiff asserts that the requirement to disclose expunged offenses either "has no basis in any statute or rule of the Oregon Supreme Court," or has no rational relation to a legitimate state purpose.

O.R.S. § 9.220(2) requires that those admitted to the bar must be of "good moral character, which may be proved by any evidence satisfactory to the [state supreme] court." O.R.S. § 9.210 and Oregon Supreme Court Rule 1.30 together give to the Board of Bar Examiners authority to investigate candidates, including certainly the power to demand disclosure of relevant information on an application form.

Information regarding expunged offenses is clearly relevant to (although not necessarily determinative of) the moral character of an applicant. Determination of moral character is without question a legitimate state purpose in the context of a professional licensing scheme. The demand for disclosure of expunged offenses is a rational and reasonable method by which to promote this state purpose. It scarcely violates plaintiff's constitutional rights.

II. *THE "PROSPECTIVE EXONERATION" CLAUSE*

The signature page of the application form contains printed language authorizing the Oregon State Bar and its agents to investigate the applicant's character and fitness, and adds this clause:

> I hereby release and exonerate those so authorized and any person or organization supplying requested information from liability of any kind resulting from the investigation or from furnishing information . . . .

Plaintiff struck the portion quoted above, then signed the application.

The Board's decision to deny plaintiff's application because of his failure to consent to the exoneration provision was a reasonable one. As we have already discussed, the Board has authority under O.R.S. § 9.210 and Rule 1.30 to investigate applicants for determination of moral character. Consistent with this authority, the Board may require an applicant to exonerate those providing information to the Board "from liability of any kind," so as to promote full disclosure of information relevant to the Board's investigation.[1]

As a means of facilitating full inquiry into the moral character of bar applicants, the requirement to sign an exoneration clause is eminently reasonable. Its presence constitutes a denial of neither due process nor equal protection.

III. *RESIDENCY REQUIREMENT*

In the pre-trial order we find the following agreed facts:

7. ORS 9.220(1) provides:

   "An applicant for admission as attorney must apply to the Supreme Court and show that he or she: (1) is a citizen . . . of this state . . . ." Defendants interpret this statute to require that an applicant state that he is a resident of Oregon at the time of his admission and that prior to admission the applicant state his intention to be a resident at the time of admission. Rules 1.10, 1.15.[2]

9. Plaintiff wishes to practice law part-time in Oregon and part-time in California. Plaintiff has no present intention of closing his California office and residence and becoming a full-time resident of and practitioner in Oregon.

Plaintiff alleges that defendants' refusal to file his application because of his expressed intention to engage in dual-state practice, without becoming a "full-time resident" of Oregon, abridges his rights of equal protection and interstate travel.

With the case in its present posture, we emphasize that plaintiff does not, indeed cannot, challenge the requirement of O.R.S. § 9.220(1) that he be a citizen of Oregon at the time of admission to practice. Rather, he challenges the Board's interpretation of that statute to require on his application a statement of intention to be an Oregon resident at the time of admission.[3]

Oregon Supreme Court Rule 3.10 provides in part:

(1) An application for admission on the attorney examination shall be on a form prescribed by the Board of Bar Examiners . . . .

Rule 3.10 then provides that the application "must show" a number of specific items. A statement of "intent to reside" is not included as one of the specified items.

However, the words "on a form prescribed by the Board" suggest that so long as the contents of the application are related to the statutory and regulatory objectives, and so long as at least the items specified in Rule 3.10 are included, the precise contents may be determined by the Board in its discretion. The Board may therefore include on its application form questions or statements designed to provide some assurance that an applicant will have the necessary "qualifications for admission," [Rule 1.30], including the necessary residence at the time of admission [O.R.S. § 9.220(1)].

We believe the Board of Bar Examiners, in demanding that each applicant sign a statement of "intent to reside," acted within the scope of its authority as provided by O.R.S. § 9.220(1) and Rule 3.10. The question remains whether Section 9.220(1) and Rule 3.10, as interpreted and applied by the Board of Bar Examiners, violate plaintiff's rights of equal protection and due process.

It may be that a requirement of Oregon residence on the date of admission would have to be supported by a compelling state interest. Assuming this is so, a state clearly has a compelling state interest in "promoting the speedy and efficient administration of justice in its courts by assuring the competence and discipline of its bar. . ." *Aronson v. Ambrose,* 479 F. 2d. 75, 77 (3d Cir. 1973). The requirement that new admittees be state residents at the time of admission is a permissible method by which to promote this compelling state interest. *Aronson, supra,* at 77–78; *Brown v. Supreme Court of Virginia,* 359 F. Supp. 549, 556–59 (E.D. Va.), *aff'd memo.* 414 U.S. 1034 (1973); *Suffling v. Bondurant,* 339 F. Supp. 257 (D.N.M.), *aff'd memo.* 409 U.S. 1020 (1972).

In this case, however, we are concerned only with the requirement that an applicant express an intent to be an Oregon resident at the time of admission. This requirement does not penalize plaintiff's "constitutional right of interstate travel."

Shapiro v. Thompson, 394 U.S. 618, 638, n.21 (1969). Despite an applicant's expression of intent to reside in Oregon in the future, he or she is under Oregon's statutes and rules free to live and travel wherever he or she chooses prior to admission to the bar. Therefore, we need not determine whether Oregon promotes a compelling state interest by demanding a statement of "intent to reside" on the application form.

Oregon has a legitimate state interest in processing only those bar applications submitted by persons who appear likely to meet admissions requirements. In furtherance of this purpose, Oregon can demand an expression from an applicant of his or her intent to reside in Oregon upon admission to its bar. Similarly, Oregon could refuse to process an application submitted by one who refuses to agree at the time of application that he or she will, if admitted, abide by the rules of the Oregon Supreme Court and of the Board of Governors. In both instances, the requirements are reasonable means of furthering Oregon's legitimate state interest in minimizing its administrative and investigative workload. Accordingly, we see no equal protection or due process violation.

IV. *CONCLUSION*

Plaintiff has not demonstrated the existence of any statutory violation or constitutional deprivation. Judgment is awarded in favor of defendants.

EUGENE A. WRIGHT
Circuit Judge

FRED M. TAYLOR
District Judge

FOOTNOTES

1. O.R.S. § 9.550(2) provides immunity for those who have "given information or testimony relative to a . . . proposed or pending contested admission . . . ."The present statute appears to be a broader grant of immunity than its earlier version, which immunized only those acting in "good faith." *See Ramstead v. Morgan,* 219 Or. 383, 347 P.2d 594 (1959); Linde, *Public Law – 1960 Oregon Survey,* 40 Ore. L. Rev. 249, 269–73 (1961).

   However, it is not clear that the present statute grants absolute immunity. For example, the statute excepts from its grant of immunity one who commits perjury. Arguably, then, one who commits perjury when giving "testimony relative to a . . . proposed or pending contested admission" would be subject to a civil proceeding brought by the allegedly injured applicant.

   Since the statute is not clear, defendants' requirement that each applicant exonerate "from liability of any kind" those who provide information to bar investigators is not mere surplusage. Accordingly, there is a rational basis for the requirement.

2. "1.10 Affidavits of residence and citizenship

   "No person may be admitted to practice law in Oregon unless he is, at the time of his admission, (a) a resident of Oregon and (b) a citizen of the United States or has declared his intention to become a citizen of the United States. Each successful applicant must execute a prescribed oath of office stating residence and citizenship qualifications, to be filed with the State Court Administrator at the admission ceremonies, or as provided in Rule 1.15 (1) and (2).

   "1.15 Oath; admission

   "(1) A qualified applicant who does not take the required oath at the time of the regular admission ceremonies may apply to the Chief Justice for permission to take the oath before any person authorized by law to administer oaths in the jurisdiction within which the

applicant may be. This application must be accompanied by a statement of the applicant to the effect that the applicant is at the time of admission a resident of Oregon."

3. The application is filed several months before the date of admission of successful applicants.

THOMPSON, D.J., concurring:

In the absence of controlling precedent, I would disagree with section III of the opinion dealing with the residency requirement. I am thoroughly in agreement with Justice Douglas' dissenting opinion in *Martin v. Walton*, 368 U.S. 25 (1961). That case is, in my view, not distinguishable from the present case and the majority rules.

APPENDIX B

Notice of Appeal to the Supreme Court of the United States from the United States District Court for the District of Oregon, filed December 8, 1976.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 75–754
NOTICE OF APPEAL

WARREN B. WILSON, *Plaintiff,*

v.

O. MEREDITH WILSON, JR., ET AL., *Defendants.*

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Warren B. Wilson, the plaintiff above-named, hereby appeals to the Supreme Court of the United States from that part of the district court's final judgment entered on November 11, 1976 which dismisses Counts 1, 2 and 3 of this action.

This appeal is taken pursuant to 28 U.S.C. Sections 1253, 2101(b).

/s/ Charles O. Porter

Charles O. Porter
Attorney for Plaintiff

Filed: 8 December 1976

APPENDIX C

Oregon Supreme Court application for examination and admission to the Oregon bar

In the Supreme Court of the State of Oregon

IN THE MATTER OF THE APPLICATION OF

FOR EXAMINATION AND ADMISSION TO PRACTICE LAW

(Do Not Write in This Space)

Application Fee	$	Received	
Investigation Fee	$	Filing No.	
	$	Admitted	
Total Fees	$	Member No.	
Student Exam			
Attorney Exam			

APPLICATION

I, the undersigned applicant, do hereby apply for examination and for admission to practice law in the State of Oregon, in conformity with the Rules of the Supreme Court of the State of Oregon for Admission of Attorneys, and furnish the following information. I fully understand that the following answers and statements are submitted under oath and that failure to answer any question or to make full disclosure of any fact or information called for herein may result in denial of my application for admission or in my later disbarment:

(If space is insufficient for any answer, use and attach duplicate separate sheets of paper of the same size, numbering answers to correspond.)

1. Full name ..... Soc. Sec. No. .....
2. (a) Residence address ..... Tel No. .....
   Street or Box Number City State Zip Code
   (b) Mailing address ..... Tel No. .....
   Street or Box Number City State Zip Code
3. Date of birth ..... and birthplace .....
4. Name and address of spouse and any former spouse .....
5. Have you ever been known by any other name or surname? ..... Yes ... No ...
   If so, state the facts fully .....
6. (a) Are you a citizen of the United States? ..... Yes ... No ...
   (b) If not, of what country are you a citizen? .....
   (c) If foreign-born, at what age did you come to the United States? .....
   (d) If naturalized, state when and where (and attach proof of naturalization) .....
   (e) If not a citizen, have you bona fide declared your intention to become a citizen? ..... Yes ... No ...
   If so, state before what court and where .....
   (f) If claiming citizenship other than by birth in the United States or naturalization, state why and attach proof .....
7. (a) Are you now a resident of the State of Oregon? ..... Yes ... No ...
   (b) If not a resident of the State of Oregon, is it your intention to become a resident prior to the time of your admission to practice law in Oregon? ..... Yes ... No ...
   (A non-resident applicant must, before admission, become a resident of Oregon and file with the State Court Administrator, Supreme Court, an affidavit that he is a resident of Oregon: See Rule 1.10.)
   (c) At what addresses and for what periods of time have you resided since your sixteenth birthday? (Show present or most recent address first, then next preceding, etc.)

Address (College or Law School Sufficient)	City	State	From (Date) to (Date)

8. List the high schools and colleges (other than law schools) you have attended, indicating the dates of attendance:

Institution	Location	Dates of attendance	Degree

—1—

APPENDIX D

Judgments of the United States District Court for the District of Oregon, dated July 13, 1976, October 12, 1976, October 14, 1976; Motion to Consolidate Judgments; Order setting aside judgments, dated November 11, 1976; Final Judgment dismissing all counts, dated November 11, 1976.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Civil No. 75—754
JUDGMENT

WARREN B. WILSON, *Plaintiff,*

v.

O. MEREDITH WILSON, JR., ET AL., *Defendants.*

Based on the Order entered by the Court, and pursuant to rule 54(b) Fed. R. Civ. P.,

IT IS ORDERED AND ADJUDGED that Counts 1, 2, and 3 of the action are dismissed.

DATED this 13th day of July, 1976.

ROBERT M. CHRIST,
CLERK
Entered on the docket on 7-13-76

By C. Hickman
Deputy

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Civil No. 75—754
JUDGMENT

WARREN B. WILSON, *Plaintiff,*

v.

O. MEREDITH WILSON, JR., ET AL., *Defendants.*

Based on the order of the Court and pursuant to Rule 54(b) Fed. R. Civ. Proc.,

IT IS ORDERED AND ADJUDGED that counts IV and V and any antitrust claims are dismissed.

DATED this 12th day of October, 1976.

Robert M. Christ, Clerk

Entered on the docket on 10-12-76

By C. Hickman
Deputy

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Civil No. 75-754
JUDGMENT

WARREN B. WILSON, *Plaintiff,*

v.

O. MEREDITH WILSON, JR., ET AL., *Defendants.*

Based on the record,

IT IS ORDERED AND ADJUDGED that counts 6 and 7 of the Complaint are dismissed.

DATED this 14th day of October, 1976.

Robert M. Christ, Clerk

Entered on the docket on 10-14-76

By C. Hickman
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 75–754
MOTION TO CONSOLIDATE JUDGMENTS

WARREN B. WILSON, *Plaintiff,*

v.

O. MEREDITH WILSON, JR., ET AL., *Defendants.*

Plaintiff, by and through his attorney Charles O. Porter, moves the Court for an order consolidating all judgments entered herein into one judgment dismissing counts 1, 2, 3, 4, 5, 6 and 7 of the complaint.

This motion is based on plaintiff's wish to appeal from one judgment instead of three in order to clear up confusion as to dates for filing jurisdictional statements and as to three judgments dated July 13, 1976, October 12, 1976 and October 14, 1976, and two abortive efforts of plaintiff to file notices of appeal; and on Goldstein v. Cox, 396 U.S. 471, and Federal Rules of Civil Procedure, Rule 60, U.S.C.A.

/s/ Charles O. Porter
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Civil No. 75-754
ORDER

WARREN B. WILSON, *Plaintiff,*

v.

O. MEREDITH WILSON, JR., ET AL., *Defendants.*

Pursuant to Rule 60(a) Fed. R. Civ. P.,

IT IS ORDERED AND ADJUDGED that the judgment entered July 13 on Counts 1, 2, and 3 of this action is set aside; the judgment entered on October 12 on Counts 4 and 5 is set aside; and the judgment entered on October 14 on Counts 6 and 7 is hereby set aside.

DATED this 11th day of November, 1976.

United States District Judge

Entered on the docket on 11-11-76

By C. Hickman
Deputy

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Civil No. 75—754
JUDGMENT

WARREN B. WILSON, *Plaintiff,*

v.

O. MEREDITH WILSON, JR., ET AL., *Defendants.*

Based upon the order entered by the court and pursuant to Rule 54(b) Fed. R. Civ. P., it is

ORDERED AND ADJUDGED that Counts 1, 2, and 3 of the action are dismissed.

Counts 4 and 5 of any antitrust claims are dismissed. Counts 6 and 7 of the complaint are dismissed.

DATED this 11th day of November, 1976.

Robert M. Christ, Clerk

Entered on the docket on 11-11-76

By C. Hickman
Deputy

APPENDIX E

Affidavit of Chapin D. Clark, Dean of the University of Oregon Law School

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 75–754
AFFIDAVIT

WARREN B. WILSON, *Plaintiff,*

v.

O. MEREDITH WILSON, JR., ET AL., *Defendants.*

STATE OF OREGON *ss.* County of Lane

I, Chapin D. Clark, having been duly sworn in, say:

1. I am currently serving and have been serving as Dean of the University of Oregon School of Law since July 1, 1974; that I have been employed as a member of the law faculty of said school continuously since September, 1962; and that I am an active member of the Oregon State Bar.

2. In my capacity as Dean of the University of Oregon School of Law, I serve as academic advisor and counselor to the law students enrolled in said school (now totaling about 480 students) and frequently discuss employment opportunities and bar admission requirements with law students in individual counseling sessions, in the Legal Professions course, and in various group sessions.

3. In this period of a tight job market for recent law graduates in traditional private practice situations, it is my clear impression that an increasing proportion of senior law students and recent graduates are seeking, and of necessity must seek employment opportunities as lawyers on an increasingly wider scale, both in terms of the nature of the positions sought in government, business and private practice but also in terms of the geographical locations of such employment opportunities. For example, a senior law student or recent

graduate may interview and submit job applications for judicial clerkships and positions as associates in law firms in several jurisdictions, for positions on the legal staff of corporations doing business on a regional or national basis, for positions as lawyers with an agency of the federal government, and so on. For many applicants, he or she must be willing to be mobile and must seek a range of lawyering opportunities in order to conduct an effective job search. At the time of taking the Oregon State Bar Examination and at the subsequent time of admission to the Bar, the recent law graduate may or may not know in which jurisdiction he or she will be residing in order to function as a member of the legal profession. The admission process to the Oregon State Bar, from the standpoint of the applicant, involves normally a period of several months and includes submitting an application, preparing for and taking an examination, and waiting for the results of that examination and the swearing in ceremony for admission. Once committed to this process for admission to the Oregon State Bar, it is difficult to shift promptly into the admissions process of another state, even though in the meantime the applicant may have received a job offer in another state or the District of Columbia. The same difficulties undoubtedly confront recent law graduates who have applied for admission in another state and have committed themselves to the admission process in that state and yet, in the interim, receive a job opportunity as a lawyer in Oregon.

4. It is in this context that I am called upon by senior law students and recent graduates in regard to the requirements for admission to the Bar. In short, the applicant may be conducting a regional or national search for employment as a lawyer and yet is effectively committed for six months or more to the admissions process in a single state, typically Oregon, in the case of graduates of the University of Oregon School of Law. More specifically, the requirement that the applicant must be a resident at the time of admission to practice in Oregon poses a dilemma for those persons who have recently accepted employment in another state and realize, at the time of admission, that they are not and will not be residing in Oregon to practice law. It is an inadequate ethical

answer, I believe, as a counselor to advise such persons that under these circumstances residency is a matter of intent which can be honorably "changed" for admission purposes and "changed" again the day after admission. On the other hand, the consequences of refusing to take the oath and be admitted are rather drastic, perhaps even losing the currently accepted job if it requires holding bar membership "in some jurisdiction." Thus, such applicants may be placed in an ethical dilemma which is particularly uncomfortable because the very act of becoming a lawyer may involve a statement of local residency which is false or a half-truth.

s/
Chapin D. Clark

Subscribed and sworn to before me this 19th day of February, 1976.

James L. Williams
Notary Public for Oregon
My commission expires:

CERTIFICATE OF SERVICE

I, Charles O. Porter, attorney for Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on January 28, 1977, I served a copy of the foregoing Jurisdictional Statement on O. Meredith Wilson, et al., Appellees herein, by mailing a copy in a duly addressed envelope with first class postage prepaid, to Jonathan A. Ater, Esq., attorney of record for Appellees, at Lindsay, Nahstoll, Hart, Dafoe & Krause, 1331 S. W. Broadway, Portland, Oregon 97201.

Dated: January 28, 1977.

Charles O. Porter

Supreme Court, U. S.
FILED
FEB 28 1977
MICHAEL RODAK, JR., CLERK

In the Supreme Court

of the United States

OCTOBER TERM, 1976

No. 76-1039

WARREN B. WILSON,

Appellant,

v.

O. MEREDITH WILSON, JR., FRANK H. HILTON, JR., HUGH SMITH, GREGORY T. HORNECKER, RONALD L. MARCEAU, EDWARD H. WARREN, THOMAS B. BRAND, JAMES W. KORTH and JON B. LUND, constituting the Board of Examiners of the Oregon State Bar, individually and in their official capacities; HOWARD A. RANKIN, DOUGLAS E. KAUFMAN, JOHN H. HOLLOWAY, WILLARD K. CAREY, DAVID S. PATTULLO, RAYMOND J. SALISBURY, ORLANDO J. HOLLIS, EDWIN J. PETERSON, DONALD R. WILSON, MERLE A. LONG, JAMES O. GARRETT, CARL R. NEIL, KENNETH E. ROBERTS, SR., and PETER L. BARNHISEL, constituting the Board of Governors of the Oregon State Bar, individually and in their official capacities; and KENNETH J. O'CONNELL, WILLIAM M. McALLISTER, ARNO H. DENECKE, RALPH M. HOLMAN, THOMAS H. TONGUE, E. H. HOWELL and DEAN BRYSON, the Honorable Justices of the Supreme Court of the State of Oregon, individually and in their official capacities,

Appellees.

On Appeal from the United States District Court for the District of Oregon

MOTION TO AFFIRM

R. W. NAHSTOLL
1331 S. W. Broadway
Portland, Oregon 97201
Attorney for Appellees

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 2-77

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In the Supreme Court
of the United States

OCTOBER TERM, 1976

No. 76-1039

WARREN B. WILSON, *Appellant,*

v.

O. MEREDITH WILSON, JR., FRANK H. HILTON, JR., HUGH SMITH, GREGORY T. HORNECKER, RONALD L. MARCEAU, EDWARD H. WARREN, THOMAS B. BRAND, JAMES W. KORTH and JON B. LUND, constituting the Board of Examiners of the Oregon State Bar, individually and in their official capacities; HOWARD A. RANKIN, DOUGLAS E. KAUFMAN, JOHN H. HOLLOWAY, WILLARD K. CAREY, DAVID S. PATTULLO, RAYMOND J. SALISBURY, ORLANDO J. HOLLIS, EDWIN J. PETERSON, DONALD R. WILSON, MERLE A. LONG, JAMES O. GARRETT, CARL R. NEIL, KENNETH E. ROBERTS, SR., and PETER L. BARNHISEL, constituting the Board of Governors of the Oregon State Bar, individually and in their official capacities; and KENNETH J. O'CONNELL, WILLIAM M. McALLISTER, ARNO H. DENECKE, RALPH M. HOLMAN, THOMAS H. TONGUE, E. H. HOWELL and DEAN BRYSON, the Honorable Justices of the Supreme Court of the State of Oregon, individually and in their official capacities, *Appellees.*

On Appeal from the United States District Court for the District of Oregon

MOTION TO AFFIRM

Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the

final judgment and decree of the District Court be affirmed on the ground that the question is so unsubstantial as not to warrant further argument.

STATEMENT

The Oregon statutes and the rules of the Oregon Supreme Court require that an applicant for admission to the Bar be a resident of Oregon at the time of admission. The official application form for admission to the Oregon State Bar requires that an applicant state at the time of application his intention to become a resident at the time of admission.

Appellant is a resident of California who has no intention of becoming a resident of Oregon and has so indicated on his application for admission to the Oregon State Bar. In this action, the appellant challenged Oregon's residency requirement on various constitutional grounds.

The District Court rejected appellant's various constitutional challenges and held that Oregon's residency requirement is lawful.

ARGUMENT

The decision of the District Court is clearly correct. This Court has rejected the contention that bar residency requirements are violative of the Equal Protection Clause of the Fourteenth Amendment or the constitutional right of interstate travel. *Brown* v. *Supreme Court of Virginia*, 359 F. Supp. 549 (E.D. Va. 1973), aff'd 414 U.S. 1034 (1973). Indeed this Court has upheld the constitutionality of a six month durational residency requirement against a challenge that it violated equal protection and the right to travel. *Suffling* v. *Bondurant*, 339 F. Supp. 257 (D. N.M. 1972), aff'd 409 U.S. 1020 (1972). *A fortiori*, Oregon's less drastic contemporaneous residency requirement is constitutionally permissible.

Any doubt concerning the constitutionality of contemporaneous residency requirements like that at issue here was put to rest by the Court's decision last term in *McCarthy* v. *Philadelphia Civil Service Commission*, 424 U.S. 645, 96 S. Ct. 1154, 47 L. Ed. 2d 366 (1976), which held in pertinent part:

> "The Michigan Supreme Court held that Detroit's [residency] requirement for police officers was not irrational and did not violate the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment. We dismissed the appeal from that judgment because no substantial federal question was presented. *Detroit Police Officers Assn.* v. *City of Detroit*, 405 U.S. 950 (1972). We have therefore held that this kind of ordinance is not irrational. *Hicks* v. *Miranda*, 422 U.S. 332, 343-345 (1975); see *Wardwell* v. *Board of Education of Cincinnati*, 529 F.2d 625, 629 (C.A. 6 1976).
>
> "We have not, however, specifically addressed the contention made by appellant in this case that his constitutionally recognized right to travel interstate as defined in *Shapiro* v. *Thompson*, 394 U.S.

618 (1969); *Dunn* v. *Blumstein*, 405 U.S. 330 (1972); and *Memorial Hospital* v. *Maricopa County*, 415 US 250 (1974), is impaired. Each of those cases involved a statutory requirement of residence in the State for at least one year before becoming eligible either to vote, as in *Dunn*, or to receive welfare benefits, as in *Shapiro* and *Memorial Hospital*. Neither in those cases, nor in any others, have we questioned the validity of a condition placed upon municipal employment that a person be a resident *at the time* of his application. In this case appellant claims a constitutional right to be employed by the city of Philadelphia *while* he is living elsewhere. There is no support in our cases for such claim.

"We have previously differentiated between a requirement of continuing residency and a requirement of prior residency of a given duration. Thus in *Shapiro, supra*, at 636, we stated: 'The residence requirement and the one-year waiting-period requirement are distinct and independent prerequisites.' And in *Memorial Hospital, supra*, at 255, quoting *Dunn, supra*, at 342 n. 13, the Court explained that *Shapiro* and *Dunn* did not question ' "the validity of appropriately defined and uniformly applied bona fide residence requirements." '

"This case involves that kind of bona fide continuing residence requirement. The judgment of the Commonwealth Court of Pennsylvania is therefore affirmed." 424 U.S. at 645-647, 96 S. Ct. at 1154-1155, 47 L. Ed. 2d at 368-369 (footnotes omitted).

Brown, *Suffling* and *McCarthy* foreclose any possible argument that the Oregon State Bar's residency requirement for admission is unconstitutional.[1]

The appellant also contends that the Oregon Supreme Court's dual practice rule is unconstitutional. If Oregon's residency requirement is proper then ap-

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[1] The appellant argues that the issues raised by this case are novel because prior decisions concerning bona fide residency requirements did not deal with challenges premised expressly on the Privileges and Immunities Clause, the Interstate Commerce Clause and the irrebuttable presumption doctrine.

This argument is meritless. With respect to the Privileges and Immunities Clause, this Court has previously held that:

> "[The Clause] does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus, the inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them. The inquiry must also, of course, be conducted with due regard for the principle that the States should have considerable leeway in analyzing local evils and in prescribing appropriate cures."

Toomer v. *Witsell*, 334 U.S. 385, 396, 68 S. Ct. 1156, 1162, 92 L. Ed. 1460, 1471 (1948) (footnote omitted). Cases such as *Brown* v. *Supreme Court of Virginia, supra*, and *Martin* v. *Walton*, 368 U.S. 25, 82 S. Ct. 1, 7 L. Ed. 2d 5 (1961), establish that there is a close and constitutionally permissible relationship between residency requirements and the states' interest in regulating the practice of law within their boundaries. The principles announced in these cases, although declared in the context of an equal protection analysis, apply equally to appellant's contention that Oregon's residency rules violate the Privileges and Immunities Clause.

The same reasoning disposes of appellant's Interstate Commerce Clause challenge. *See generally Great A&P Tea Co., Inc.* v. *Cottrell*, 424 U.S. 366, 96 S. Ct. 923, 47 L. Ed. 2d 55 (1976); *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137, 90 S. Ct. 844, 25 L. Ed. 2d 174 (1970).

Finally, appellant's reliance on the irrebuttable presumption doctrine is misplaced. As appellant concedes, that doctrine is founded on the constitutional guarantee of due process. This Court has specifically rejected arguments that bona fide residency requirements are violative of due process. See *McCarthy* v. *Philadelphia Civil Service Commission*, 424 U.S. 645, 96 S. Ct. 1154, 47 L. Ed. 2d 366 (1976).

pellant, a non-resident, has no standing to raise this argument. But in any event the argument is without merit. Appellant's contention is foreclosed by a prior decision of this Court, *Martin* v. *Walton*, 368 U.S. 25, 82 S. Ct. 1, 7 L. Ed. 2d 5 (1961), which held:

> "The appeal is dismissed for want of a substantial federal question. Upon plenary consideration, we are satisfied that, both on their face and as applied to appellant, Kan. Gen. Stat., 1949, § 7-104, and amended Kan. Sup. Ct. Rules 41 and 54 promulgated by the Supreme Court of Kansas, acting within its competence under state law, are not beyond the allowable range of state action under the Fourteenth Amendment. See, *e.g.*, *Dent* v. *West Virginia*, 129 US 114; *Graves* v. *Minnesota*, 272 US 425; *Schware* v. *Board of Bar Examiners*, 353 US 232, 239; *Hitchcock* v. *Collenberg*, 353 US 919; *Kovrak* v. *Ginsburg*, 358 US 52. We cannot disregard the reasons given by the Kansas Supreme Court for the Rules in question. 187 Kan 473, 357 P2d 782. Nor does the fact that the Rules may result in 'incidental individual inequality' make them offensive to the Fourteenth Amendment. *Phelps* v. *Board of Education*, 300 US 319, 324." 368 U.S. at 25-26, 82 S. Ct. at 2, 7 L. Ed. 2d at 6.

The Kansas Supreme Court Rules at issue in *Martin* v. *Walton*, *supra*, were equivalent in all relevant respects to the Oregon Supreme Court's dual practice rule. *Compare Martin* v. *Davis*, 357 P.2d at 784-785 *with* Oregon Supreme Court Rule for Admission of Attorneys 7.05, reprinted on page 3 of Appellant's Jurisdictional Statement.

We respectfully submit, therefore, that the appellant presents no substantial question for the decision of this Court, and that the judgment and decree of the District Court should be affirmed.

Respectfully submitted,

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